(Spl.-H.C.A.S.C.D., 78-e)

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF BOMBAY AT GOA
PANAJI, GOA.
APPELLATE SIDE

DISTRICT :

APPEAL FROM ORDER NO. 67 OF 2003.

Office Notes, Office Memoranda of Quorum, appearances,Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. M. S. Usgaonkar, Senior Advocate with Mr. Sudin Usgaonkar, Advocate for the appellants.

Mr. R. G. Ramani, Advocate for respondents No. 1 and 2.

Mr. V. B. Nadkarni, Senior Advocate with Mr. Y. V. Nadkarni, Advocate for caveators/respondent Nos. 7, 8, 9 and 10.

CORAM : B. H. MARLAPALLE, J.

DATE : 9th DECEMBER, 2004.

P.C. :

1. Heard Mr. Usgaonkar, learned Senior Counsel for the appellants

and Mr. Nadkarni, learned Senior Counsel for respondents No. 7 to 10. Application for temporary injunction filed under Special Civil Suit No. 14/2003 and listed as Civil Miscellaneous Application No. 18/2003 has been dismissed by the Learned Civil Judge, Senior Division at Panaji on 27.08.03 and the said order is challenged in this Appeal From Order.

2. The plaintiff had entered into an agreement for purchase of plot marked as B-5 “Ocean Park” with respondent No. 8 and subsequently for construction of a Villa on the said plot with respondent No. 9. These agreements were signed on or about 22.05.95 and the construction was to be put on the

same plot ad-measuring 325 sq.mts. It appears for some of the defendants had circulated and passed on to the plaintiffs leaflets and other documents explaining the scenic beauty, open area and visibility of the sea, etc. The construction proceeded and was completed sometimes in 1998 and it was occupied by the plaintiffs thereafter. Sale deed was signed on 5.4.99. The trial Court referred to the terms of the sale deed and noted that by the time this document was executed, construction had already come up in the neighbouring plots i.e. D-5, D-6, D-8 and D-10 with a height of about 12 mts. It was contended by the plaintiffs that the maximum height could not exceed 8 mts. of any building in the Ocean Park in

view of the promise made by defendant No. 8 by various letters and leaflets/brochures, etc. However, on plots No. B-1 to B-3 and C-1 to C-5, multistoried structures were undertaken with a height of about 14 mts. The plaintiffs objected to this by various letters and brought to the notice of the defendants No. 8 to 10 that the said construction beyond 8 mts. height was contrary to the promises made or commitments made while construction on plot B-5 was undertaken. The plaintiffs therefore prayed for temporary injunction which read as under :

> " By temporary injunction, the defendants, their agents, servants, contractors and labourers be restrained from carrying out or undertaking any construction within plots No. C-4, C-3, C-2, C-1, B-1, B-2, B-3 and C-5".

3. This application for temporary injunction was moved before the trial Court on 11.01.03 and came to be rejected by impugned order passed on 27.08.03. By the time this appeal has been taken up for hearing on admission board today, it is stated by Mr. Nadkarni, learned Senior Counsel appearing for respondents No. 7 to 10 that the subject construction sought to be stayed has already been constructed. Occupancy certificates have been issued and some tenants have already occupied. This position is not seriously disputed. Under such circumstances, the relief of temporary injunction as was prayed cannot be considered at this belated stage.

4. Nevertheless, the Special Civil Suit No. 14/2003 will have to be tried on its own merits and the reliefs prayed for in the said suit will have to be adjudicated upon. When the suit was filed, the construction sought to be stayed by temporary injunction was either undertaken or in progress and therefore on completion of the said construction, the challenge raised in the suit would not become infructuous. The trial Court will have to consider the respective pleadings and adjudicate upon the same as per law regarding the promissory estoppel or leasementary rights or principle of non-derogation of rights. At the same time it would be appropriate to direct the trial Court to decide the suit within a

specific period.

5. The appeal is therefore dismissed in limine. The trial Court is directed to hear and decide the suit i.e. Special Civil Suit No. 14/2003 as expeditiously as possible and preferably within a period of 6 months from the receipt of this order, on its own merits. Parties to appear before the trial Court on 04.01.05.

B. H. MARLAPALLE, J.

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